



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of D and Rys, Inc.

Case No.: TR-14-0021

FINAL DECISION

On March 12, 2014, an employee of the Division of Motor Vehicles of the Department of Transportation filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of D and Rys, Inc. The claim along with documents gathered by the Department during its investigation of the claim was referred to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on November 5, 2014. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d), the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Wisconsin Department of Transportation
Division of Motor Vehicles
Revenue Accounting
P.O. Box 7736
Madison, WI 53707-7736

Gust Kozarczewski
D and Rys, Inc.
1384 Baronet Lane
Palatine, IL 54937-9139

Platte River Insurance Company
P.O. Box 5900
Madison, WI 53705

FINDINGS OF FACT

1. D and Rys, Inc., (Dealer) was a motor vehicle dealer licensed by the Wisconsin Department of Transportation (Department) pursuant to Wis. Stat. § 218.0111. The Dealer's facilities were located at 233 North Main Street, Burlington, Wisconsin. The Dealer was placed out of business effective July 31, 2013.

2. The Dealer has had a surety bond satisfying the requirements of Wis. Stat. § 218.0114(5) since June 7, 2011 (Platte River Insurance Company bond number 41228424).

3. During the time period between April 22, 2013, and May 23, 2013, the Dealer submitted to the Department's Division of Motor Vehicles (DMV) 26 Wisconsin Title and Registration Applications (MV-11s) for motor vehicles that the Dealer had sold to retail customers. The Dealer submitted two checks to cover the required fees to process the applications. The checks were drawn on an account at U S Bank. One check was dated May 17, 2013, and was in the amount of \$4,337.50. The other check was dated April 12, 2013, and was in the amount of \$339.00.

4. The checks were returned due to insufficient funds in the Dealer's account. The DMV sent letters to the Dealer requesting payment of the required fees plus a \$20.00 service charge for each nonsufficient fund check. The DMV received no response to the letters from the Dealer.

5. On March 12, 2014, the DMV submitted a claim against the surety bond of the Dealer in the amount of \$4,716.50. The amount of the bond claim represents the sum of the unpaid fees and service charges for the 26 MV-11s submitted to the DMV.

6. The Dealer's failure to submit the required fees along with the MV-11s constitutes a violation of Wis. Stat. § 342.06(1). A violation of Wis. Stat. § 342.06(1), in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles).

7. The loss sustained by the DMV was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is allowable. The DMV has provided documentation to support a claim in the amount of \$4,716.50, the amount of the nonsufficient funds checks written to cover the required fees to process the 26 MV-11s and the service charges for the returned checks.

8. The DMV's claim arose during the time period between April 22, 2013, and May 23, 2013, the dates the nonsufficient funds checks were submitted. The bond claim was filed within three years of the ending date of the one-year period that a surety bond issued by The Platte River Insurance Company was in effect and is, therefore, a timely claim.

CONCLUSIONS OF LAW

1. The DMV's claim arose during the time period between April 22, 2013, and May 23, 2013. The Platte River Insurance Company issued a one year surety bond to the Dealer covering a one-year period commencing on June 7, 2012. The claim arose during the period covered by the surety bond.

2. The DMV filed a claim against the motor vehicle dealer bond of the Dealer on March 12, 2014. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. The DMV's loss was caused by an act of the Dealer which would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c), the claim is allowable. The DMV has provided documentation to support a claim in the amount of \$4,716.50.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by the Division of Motor Vehicles against the motor vehicle dealer bond of D and Rys, Inc., is APPROVED in the amount of \$4,716.50. The Platte River Insurance Company shall pay the Division of Motor Vehicles this amount for the loss attributable to the actions of D and Rys, Inc.

Dated at Madison, Wisconsin on January 30, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____
Mark F. Kaiser
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.